

# **Exhibit 31**

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

\* \* \* \* \*

AUTHENTICOM, INC.

Plaintiff,

-vs-

Case No. 17-CV-318-JDP

CDK GLOBAL, INC., LLC  
and THE REYNOLDS and  
REYNOLDS COMPANY,

Madison, Wisconsin  
June 27, 2017  
1:50 p.m.

Defendants.

\* \* \* \* \*

STENOGRAPHIC TRANSCRIPT-SECOND DAY OF EVIDENTIARY HEARING  
**AFTERNOON SESSION**  
HELD BEFORE THE HONORABLE JAMES D. PETERSON,

APPEARANCES:

For the Plaintiff:

Godfrey & Kahn S.C.  
BY: JENNIFER GREGOR  
One East Main Street, Ste. 500  
Madison, Wisconsin 53703

Kellogg, Hansen, Todd, Figel & Frederick, PLLC  
BY: MICHAEL NEMELKA  
AARON PANNER  
DAVID SCHWARZ  
DEREK HO  
JOSHUA HAFENBRACK  
KEVIN MILLER  
JOHANNA ZHANG  
1615 M Street, NW, Ste. 400  
Washington, DC 20036

Also present: Stephen Cottrell - Authenticom president  
Steve Robb - IT technician

Lynette Swenson RMR, CRR, CRC  
U.S. District Court Federal Reporter  
120 North Henry Street, Rm. 520  
Madison, Wisconsin 53703

1 BY MS. GULLEY:

2 Q If you'll turn to Exhibit 99. There's been earlier  
3 testimony here. Do you agree that exhibit -- defendants'  
4 Exhibit 99 is the cease-and-desist letter -- a  
5 cease-and-desist letter that you sent to Authenticom in  
6 April 2015?

7 A Yes, I do.

8 MS. GULLEY: I would move to admit defendants'  
9 Exhibit 99.

10 THE COURT: Any objection?

11 MR. NEMELKA: No.

12 MS. GULLEY: Did you send --

13 THE COURT: It's admitted.

14 MS. GULLEY: Thank you, Your Honor.

15 BY MS. GULLEY:

16 Q Did you send cease-and-desist letters to other  
17 unauthorized automated accessors of the dealer-facing  
18 side of the DMS?

19 A Yes.

20 Q For example?

21 A DMI.

22 THE COURT: I'm sorry, what was that? DMI?

23 THE WITNESS: Yeah.

24 BY MS. GULLEY:

25 Q Anyone else? SelectQu we heard testimony --

1 A SelectQu was another one.

2 Q All right. You sent this in April 2015 saying they  
3 were violating your rights. Do you still think  
4 Authenticom is violating your rights?

5 A Yes.

6 Q Now, you've blocked unauthorized access for a number  
7 of years. I think at this point there's really no  
8 dispute about that. But you have authorized it. So  
9 you've blocked unauthorized use, but you have authorized  
10 automatic processes in certain circumstances in the past;  
11 correct?

12 A That's correct.

13 Q We've heard it called different things. Wind down  
14 is one of the things we've heard about. Has Authenticom  
15 ever been part of your wind-down monitored access program  
16 as you move people to the certified interfaces?

17 A Not exactly. Not directly, no.

18 Q What do you mean not directly?

19 A Well, what we do is we actually form the  
20 relationship with a vendor, and that vendor then,  
21 depending on who they're using, is who we actually end up  
22 allowing to get in. We're actually having that  
23 relationship with the vendor, not with that individual  
24 data broker, as an example. So we're actually white  
25 listing that vendor versus the actual Authenticom or DMI

1 or whoever.

2 Q The service provider to the dealer when you say  
3 vendor?

4 A That's correct.

5 Q So in what circumstances would that come up? Why  
6 would you -- in what circumstances would you find  
7 somebody that's been using Authenticom that you would be  
8 doing this?

9 A Well, there's vendors that would be using  
10 Authenticom to use to get into the DMS to get the system,  
11 so we would actually protect or white list that user ID  
12 so Authenticom could get in to get that data for that  
13 vendor.

14 Q What if you -- what about -- we heard some testimony  
15 earlier about acquisitions of companies. Is that --

16 A Where we've been with that is that the ones we use  
17 with Authenticom today have been acquisitions; that we've  
18 actually gone out and purchased those were the ones. The  
19 other ones that we've white listed, in the case of  
20 Authenticom being the data broker, would be the  
21 third-party vendors we've got in the RCI program or OEMs.  
22 Jaguar or BMW are an example.

23 THE COURT: So the third-party vendors that  
24 you've got in the -- I didn't catch the name of the --

25 THE WITNESS: In the RCI program.

ROBERT SCHAEFER - DIRECT

1 BY MR. NEMELKA:

2 Q Okay. If you go to Section 1.9, do you see it says  
3 *Nonapproved Access*?

4 A Yes.

5 Q So when a vendor signs up for RCI, they can't get  
6 data after they sign up. They are precluded from getting  
7 data from any other integrator, aren't they?

8 A Until they're certified. We allow it during the --  
9 what we call the wind-down period where they aren't using  
10 our stuff yet, which is what we've been through.

11 Q But once they're fully certified or fully integrated  
12 with Reynolds, you don't allow them to get data from  
13 anywhere else, do you?

14 A No.

15 Q So this is an exclusive dealing contract, isn't it?

16 MS. GULLEY: Objection. Leading.

17 MR. NEMELKA: I'll strike it.

18 THE COURT: I'll sustain the objection.

19 BY MR. NEMELKA:

20 Q But if a vendor signs with you, the vendor has to  
21 agree that it can't use Authenticom; right?

22 A It can't use an unauthorized access.

23 Q If a vendor signs with you, it has to agree that it  
24 can't get data from anywhere else; right?

25 A They do get -- they can get data from other places.

1 I'll give you an example; okay? As an example, they take  
2 the data and they send it off to IHS for cleansing  
3 services or other things and they give it to us to do  
4 those so they can add those services for their piece.  
5 But to go get other data out of our DMS, the answer no.

6 Q The answer is no; right?

7 A Um-hmm. And the reason --

8 Q Ms. Gulley can ask you further reasons. Please  
9 turn -- you enforce this exclusive provision that they  
10 can only get data from you. Reynolds enforces that,  
11 doesn't it?

12 A Yes.

13 Q Okay. Please turn to tab 54. This is plaintiff's  
14 hearing Exhibit 54. This is a letter that you sent on  
15 April 19 -- you personally, Mr. Schaefer, you sent this  
16 on August 19, 2016, to a vendor because that vendor used  
17 Authenticom for data integration; right?

18 A That's correct.

19 Q And you said they cannot use Authenticom for data  
20 integration because they have the contract with you,  
21 right?

22 A That's correct.

23 Q And you demanded that they pay you \$100,000 for  
24 slipping up and using Authenticom; right?

25 A When I sent it, that's what we -- for using an

1 unauthorized access, yes.

2 Q You demanded \$100,000 from this vendor, didn't you?

3 A Yes.

4 Q Is there anything in this letter, Mr. Schaefer,  
5 about data security or system integrity?

6 A Going to get data from another source that isn't  
7 secure on our system we don't know about, yeah, that's a  
8 risk that we don't want to take.

9 Q That wasn't my question. Is there anything in this  
10 letter about data security or system integrity? There  
11 isn't, is there?

12 A No.

13 Q You just wanted \$100,000 from the vendor for using  
14 Authenticom; right?

15 A No.

16 Q All right. Please turn to tab 89. We're almost  
17 done.

18 MR. NEMELKA: I'd like to move -- excuse me, I  
19 forgot. I'd like to move that prior exhibit into  
20 evidence, please.

21 THE COURT: Any objection to 54?

22 MS. GULLEY: Just I object that I don't know  
23 where the extraneous notes come from and that I  
24 previously sent Mr. Nemelka several letters regarding the  
25 confidentiality of that letter. But with that stated

1 that it's confidential and that I don't know what the  
2 notations are, I --

3 THE COURT: Okay. We'll preserve the  
4 confidentiality. And the notation is -- it looks like  
5 there's highlighting and a handwritten note.

6 MS. GULLEY: Yes, Your Honor. Thank you.

7 THE COURT: Okay. With that exception, I don't  
8 know what to make of the notation either, so subject to  
9 that proviso about the notations, it's admitted.

10 MR. NEMELKA: Thank you.

11 BY MR. NEMELKA:

12 Q Exhibit 89, Mr. Schaefer, is an email from  
13 Authenticom dated March 13, 2014, to among other people,  
14 Chris Hellyer at Reynolds; correct?

15 A Yes, yes.

16 Q Okay. And it attaches a report of Jaguar, Land  
17 Rover and other dealers that -- Reynolds dealers that  
18 Authenticom pulled data from; correct?

19 A I would assume. I don't know that specific, but I  
20 would assume.

21 Q And if you look at the attachment -- actually let's  
22 look at the email, what she writes to Reynolds. In the  
23 middle -- middle paragraph, that last sentence says "We  
24 will continue to send in requests to Reynolds and  
25 Reynolds to protect new profiles for new Jaguar orders